

No. 48963-5-II

#14-1-02055-4

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

LAFE W. HOTCHKISS, II,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
CLARK COUNTY

The Honorable Scott A. Collier, Judge

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. There was insufficient independent evidence to prove possession of methamphetamine with intent to deliver under the *corpus delicti* rule.
2. Appellant Lafe Hotchkiss, II, assigns error to the entire nearly 2-page “finding of fact and conclusion of law” 7 on the bench trial, which provides:

Regarding the corpus delicti argument raised by the defense as to the Possession of a Controlled Substance With Intent to Deliver - Methamphetamine count, the Court has defendant’s statements which includes among others that he sells to about 10 customers, and he takes a ball, which he gets approximately once per day, and breaks it down to resell. Also, the Court has the evidence of the methamphetamine and the \$2,150 cash found in defendant’s safe.

The Court notes that the state needs to present sufficient corroborating evidence independent of defendant’s statements, and the evidence would need to support a logical and reasonable inference of the facts sought to be proved. In doing so, the Court is to assume the truth of the state’s evidence and draw all reasonable inferences from the corroborating evidence in the light most favorable to the state.

In addition, the Court notes the Brockob case, 159 Wash. 2d 311 (2006), which is cited by both sides. The Brockob case found that as to co-defendant Brockob there was a reasonable inference that Brockob’s conduct was non-criminal activity; however that case involved Sudafed which is legal to possess under certain circumstances. Thus, our instant case is distinguishable from Brockob because our situation involves methamphetamine which is not legal to possess in any amount or circumstance.

However, there is also the case of State v. Brown, 68 Wn. App. 480 (1993), in which an experienced police officer’s testimony indicated that the amount of cocaine possessed by a juvenile (20 rocks of cocaine) was more than an amount usually possessed for personal use, that the evidence alone

was not sufficient to support the finding that Brown possessed the cocaine with intent to deliver when there was no other evidence of that intent. Similar to Brown, the DTF detectives in our instant case could and did properly testify, based on their experience and training, that the amount of methamphetamine possessed by Hotchkiss could be more than a personal use amount, could be a deliverable amount. However, as noted previously, the court in Brown held that an amount of an illicit drug above a personal use or a deliverable amount, in and of itself, is not sufficient evidence of intent to deliver the drug. There needs to be some other additional corroborating evidence.

With that said, the state articulates its position that the \$2,150 cash which was locked in defendant's safe along with the 8.1 grams of methamphetamine is an additional corroborating piece of evidence which gets us passed [sp] corpus. The state cites to the Hagler case, 74 Wn. App. 232 (1994), in which a juvenile was in possession of cocaine in an amount which was arguably above a personal use amount and consistent with possessing with the intent to deliver. In addition, Hagler had \$342 in cash in his possession along with the drugs. If approximately \$342 in cash is sufficient additional corroborating evidence regarding a juvenile, then the court finds that approximately \$2,150 in cash on an adult is sufficient additional evidence as to the issue of corpus delicti in this case. The Court notes that this is a close call but assuming the truth of the state's evidence and with the inferences in the light most favorable to the state, the Court finds that the state has produced enough evidence to get passed [sp] the corpus delicti test.

CP 232-35.

3. Appellant also assigns error to the trial court's conclusions of law 6 and 7 and 8 that he was guilty of possessing methamphetamine with intent to deliver. CP 235-36 .

B. QUESTIONS PRESENTED

Under the *corpus delicti* rule, a conviction based on the defendant's confession must also be supported by *prima facie* independent evidence which supports the inference that the defendant committed the charged crime.

Did the prosecution fail to meet its burden of proof where the *prima facie* evidence presented by the state consists of evidence which is consistent with a theory of innocence as well as one of guilt?

C. STATEMENT OF THE CASE

1. Procedural Facts

Appellant Lafe W. Hotchkiss, II, was charged in Clark County by amended information with possession of methamphetamine, possession of heroin and possession with intent to deliver methamphetamine, with the latter charge including a school bus route stop enhancement. CP 18-19; RCW 9.94A.533(6); RCW 69.50.401(1)(2)(b); RCW 69.50.4013(1); RCW 69.50.435(1)(c).

Preliminary hearings were held as follows: October 6, 7, 17 and 28, 2014 (before the Honorable Scott A. Collier), November 28, 2014 (before the Honorable Suzan Clark), February 12 and April 21, 2015, (before the Honorable Robert A. Lewis), June 9, July 17, 27 and 30 and August 25, 2015 (Judge Collier), October 22, 2015 (the Honorable Bernard F. Veljacic), December 20, 2015 and January 28, 2016 (Judge Lewis), March 10, 2016 (Judge Clark) and March 14 and 24, 2016 (Judge Collier). RP 225.¹ The prosecution dismissed the first count, possession of methamphetamine, and Mr. Hotchkiss, II, was tried in a bench trial before Judge Collier on April 1 and 7. RP 225; CP 126. He was found guilty of the remaining charges and a standard-range sentence was imposed on May

¹The verbatim report of proceedings consists of 4 chronologically paginated volumes, which will be referred to as "RP."

6 and 17, 2016. RP 225; CP 238²

Mr. Hotchkiss, II, appealed and this pleading follows. See CP 252.

2. Testimony at the bench trial

Deputy Brian Kessel and Sergeant Patrick Moore of the Clark County Sheriff's Office and were working with a drug task force on October 3, 2014, and had a signed search warrant for a home on Southeast 145th Court in Vancouver, Washington. RP 262-65, 296. While officers were watching the home, two people drove off in a car, one of whom, Allison Ellred, was known to live at the home. RP 263. Deputy Kessel knew Ellred had a warrant out for her arrest and suspected the other person in the car was Hotchkiss, II, so he pulled the car over. RP 263-64. Although the other person was not Hotchkiss, II, officers learned from Ellred that Hotchkiss, II, was at work at a glass company nearby. RP 264.

Officers drove to the glass company, asked about and then spoke outside with Mr. Hotchkiss, II. RP 264-65, 298-99. They told Hotchkiss, II, that they had a search warrant for his home and probable cause to arrest him. RP 265. Deputy Kessel then asked what vehicle Hotchkiss, II, had driven to work. RP 265.

Hotchkiss, II, pointed to a red and black motorcycle in the parking lot nearby. RP 267-68. Officers then asked for and secured consent to search. RP 267-68. There was a locked box on the motorcycle and officers asked for the key, which Hotchkiss, II, said was at his workstation in a bag. RPR 268.

²The verbatim report of proceedings consists of 4 chronologically paginated volumes, which will be referred to as "RP."

One of the officers with Kessel was Sergeant Moore. RP 269-70. Moore went back inside the business, then returned carrying a bag, a helmet and a jacket identified by the defendant as his. RP 268-69, 274, 299. Moore searched the jacket and found “ a small quantity of suspected heroin” in the right front pocket. RP 269-70, 300. A deputy field-tested the substance and said it tested “positive” for heroin. RP 281-82, 286.

Nothing of evidentiary value was found in the locked compartments of the motorcycle when the key was ultimately found. RP 269-70.

With Mr. Hotchkiss, II, in tow, the officers drove to his home. RP 270. Three adults and a child were standing outside. RP 277, 280. At trial, Kessel admitted to being unsure whether they were “renters” also living at the home. RP 277.

By this time, Kessel had arrested Hotchkiss, II, and read him his rights. RP 270. During the search of the house, a safe was found and Deputy Kessel then came out and questioned Hotchkiss, II, who was in the back of the police car. RP 271. According to the officer, Hotchkiss, II, said there was an “8-ball” of methamphetamine - approximately 3.8 grams - in the safe. RP 271. He admitted to getting about that amount a day and said he “broke it down” or cut it to sell to his estimated 10 customers. RP 271-72. Regarding the heroin, Hotchkiss, II, said he did not use it himself but had been given it by someone who owed him money. RP 272. He had it in his pocket that day at work because he was trying to figure out how to get rid of it. RP 272.

The deputy told Hotchkiss, II, that if he did not give officers the

code to the safe, police would just damage it breaking in. RP 272.

Hotchkiss, II, gave up the code and officers opened the safe, finding inside some suspected methamphetamine, a cell phone and an envelope containing \$2,150 in cash. RP 301-302, 304. On the top of a dresser in that same room was found a paystub with the defendant's name on it. RP 304-305. At trial, it was stipulated that the substance found in the safe weighed 8.1 grams and that it later tested positive for the presence of methamphetamine. RP 294-95.

In describing the amount of suspected methamphetamine in the safe, Sergeant Moore, who found it, said it was a "small quantity[.]" RP 303.

Mr. Hotchkiss, II, admitted that he used methamphetamine and had for awhile. RP 318-21. He was living at the time with Allison Ellred, sharing the bedroom where the safe was found. RP 318-21. Ellred, too, was a user. RP 321. Between the two of them, Hotchkiss, II, admitted, they used about "an 8-ball or so" per day. RP 321. Deputy Kessel identified an "8-ball" as about 3.8 grams. RP 271.

Hotchkiss, II, and Ellred also lived with three other people, who were renters. RP 318-20. Hotchkiss, II, explained they were two older people with their grandchild, and they paid him \$1150 in rent, usually in cash. RP 318-21. His renters, Ralph and Debbie Robles, had a contract but they really did not do receipts. RP 326.. The money in the safe was partially from those rent payments and partially from the paycheck Hotchkiss, II, earned. RP 321-22. He was earning about \$16 or \$17 an hour at the time, as shown on the seized paystub. RP 322.

Hotchkiss, II, disputed the officer's claims that Hotchkiss, II, had confessed to selling methamphetamine at the house. RP 322. Instead, Hotchkiss, II, said, he might have mentioned selling about 20 years in the past, when Hotchkiss, II, had been about 21 years old and had been "locked up" before. RP 322. Hotchkiss was 44 years old now. RP 322-23.

There was apparently nothing incriminating on the cell phone seized from the safe as nothing from that phone was used by the state against Mr. Hotchkiss, II. RP 303.

No baggies, scales, sales records, weighing tools, cutting tools, cutting substances or other indications of sales were found, even though in the warrant affidavit it was claimed by the confidential informant that a digital scale and packaging material was in the home. RP 257-307; see CP 46-47.

At trial, Sergeant Moore admitted that the amount of drug "hits" available in one gram of methamphetamine depended completely on the person ingesting the substance and factors individual to them. RP 336-37. While Moore first speculated that for "most individuals, it's anywhere from .2 grams up to .4 grams in any one given kind of dosage" the officer then admitted that "[i]t could be more. It could be less." RP 337.

Indeed, when asked if one gram of methamphetamine had "potentially five hits," the officer agreed but also said it could "potentially be two or three" and even "[p]otentially could be one." RP 337.

At that point, the judge hearing the proceeding summed up what the officer was saying, that it appeared to be "a wide variety" but the more

“common” was “.2 to .4 grams per hit.” RP 337-38. A moment later, over defense objection, the officer was allowed to testify that, “[b]ased on the training, knowledge and experience and the years on the drug task force . . . the totality of the circumstances, it’s very rare” that “somebody with eight grams is just personal use.” RP 338-39.

The prosecutor then asked if it was a “rare, uncommon thing to deal in eight-gram amounts per day,” and the officer said “[i]n our experience with - - I would say yes, it’s very - - it’s rare.” RP 339. But the sergeant also admitted, he had “seen it.” RP 339.

Deputy Kessel was not asked to opine about amounts for “personal use.” RP 261-281. Neither was Deputy Brockus. RP 281-296.

D. ARGUMENT

REVERSAL AND DISMISSAL IS REQUIRED BECAUSE
THE PROSECUTION FAILED TO PRESENT SUFFICIENT
EVIDENCE TO INDEPENDENTLY SUPPORT THE
CONVICTION UNDER THE *CORPUS DELICTI* RULE

For years, state and federal courts have recognized the serious problems with reliability of a defendant’s confession. See, City of Bremerton v. Corbett, 106 Wn.2d 569, 574-77, 723 P.2d 1135 (1986); Smith v. United States, 348 U.S. 147, 75 S. Ct. 194, 99 L. Ed. 2d 192 (1954). The judicially created *corpus delicti* rule is designed to mitigate some of these concerns. See State v. Dow, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010). Under the rule, a conviction cannot be based upon the defendant’s confession alone. See State v. Brockob, 159 Wn.2d 311, 328, 150 P.3d 59 (2006). Instead, the defendant’s extrajudicial statements may not be admitted into evidence and used against him absent sufficient

independent proof of the existence of the crime. Id. Where the state fails to present sufficient independent evidence to support the conviction absent the defendant's confession, reversal is required and dismissal must be ordered. See id.

In this case, this Court should reverse and dismiss the conviction for possession with intent to deliver, because the prosecution failed to present sufficient independent evidence of the crime, absent the incriminating statement Hotchkiss, II, made to police.

As a threshold matter, this issue is properly before the Court. The *corpus delicti* issue was raised, repeatedly, below - before the case went to trial, after the state rested and even later, in the motion for a new trial. Below, counsel repeatedly argued that there was insufficient independent evidence that the possession was with intent to deliver, absent the incriminating statement of Mr. Hotchkiss, II, and urged dismissal under the *corpus delicti* rule. RP 255-56, 309.

On review, this Court should reverse. *Corpus delicti* means "the body of the crime" and under the rule, the state must present *prima facie* evidence of the charged crime in order to sufficiently support admission of and reliance on a defendant's confession. State v. Aten, 130 Wn.2d 640, 660-61, 927 P.2d 210 (1996). Evidence is sufficient under this standard if that evidence independent of the defendant's statement supports a "logical and reasonable inference of the facts sought to be proved." Brockob, 159 Wn.2d at 328. This Court reviews the trial court's determination that the *corpus delicti* rule was met *de novo*. State v. Pineda, 99 Wn. App. 65, 77-78, 992 P.2d 525 (2000).

Here, the fact sought to be proved is that the possession of the methamphetamine in the safe was with the required intent. The crime of unlawful possession of a drug with intent to deliver requires proof of more than mere possession. RCW 69.50.401; see State v. Goodman, 150 Wn.2d 774, 782, 83 P.3d 410 (2004); see also, State v. Zunker, 112 Wn. App. 130, 135, 48 P.3d 344 (2002).

What's more, this is true even if the quantity possessed is deemed greater than those "normal" for personal use. State v. Lopez, 79 Wn. App. 755, 769, 904 P.2d 1179 (1995); State v. Hagler, 74 Wn. App. 232, 235-36, 872 P.2d 85 (1994).

In deeming the evidence sufficient under the *corpus delicti* rule below, the trial court relied solely on the fact that the drugs were found with the money in the safe. The court was convinced that even though the amount of drugs was not "a large dealer amount," the \$2,150 also in the safe was enough to support the inference that the drugs were possessed with the intent to deliver. RP 260. The judge went on:

I have to concede, though, just for the record. . . we typically sometimes see a little bit more. You see packaging material. Don't have that here. You see scales. They didn't come up with that. Those are not present here.

RP 360-61. The judge said that the question was "do we tip over" into sufficient evidence, but then said the amount of drugs and the amount of drugs was enough. RP 361. The judge admitted again, however, "[i]t's not a strong" case and it was "a close case." RP 361.

Later written "findings and conclusions" of several pages were later entered, which provided more detail as to the basis for the ruling. See CP

229-237. That detail included a nearly 2 page long “finding,” Finding 7, set forth in full in the Assignments of Error, *infra*. Included in that “finding” was the trial court’s discussion of *corpus delicti* including its decision based on comparison to a Washington case involving a juvenile but again stating it was a “close call:”

[I]f approximately \$342 in cash is sufficient additional corroborating evidence regarding a juvenile, then the court finds that approximately \$2,150 in cash on an adult is sufficient additional evidence as to the issue of corpus delicti in this case.

CP 234.

Thus, the court found sufficient independent evidence of possession of methamphetamine with intent to deliver based solely on the fact that there was money next to the drugs in the safe.

This holding does not withstand review.

At the outset, it is important to note the standards which apply. The prosecution in this state has repeatedly urged application of the federal standard and that used by some states, which requires that the “independent corroborating evidence must only *tend to establish the trustworthiness of the confession.*” Dow, 168 Wn.2d at 253 (emphasis in original); see State v. Ray, 130 Wn.2d 673, 926 P.2d 904 (1996); Aten, 130 Wn.2d at 663.

This state, however, applies a different standard:

The confession of a person charged with the commission of a crime is *not sufficient* to establish the *corpus delicti*, but if there is *independent proof thereof*, such confession may then be considered in connection therewith and the *corpus delicti* established by a combination of the independent proof and the confession.

Dow, 168 Wn.2d at 252, quoting, Aten, 130 Wn.2d at 656 (emphasis in original). And the Court has repeatedly reaffirmed these standards. See

Brockob, 159 Wn.2d at 327-38.

As a result, our state has remained among the minority of courts refusing to adopt the more relaxed standard, instead retaining the requirement that the evidence must independently corroborate or confirm the defendant's confession. Aten, 130 Wn.2d at 663; see Brockob, 159 Wn.2d at 328-29.

Thus, in order to support admission of a defendant's incriminating statement and conviction under the *corpus delicti* rule, the state must present independent evidence that the crime the defendant described in his statement occurred. Brockob, 159 Wn.2d at 328. In general, the reviewing court takes the "independent evidence" in the light most favorable to the state but also applies *de novo* review. Id. While the independent evidence need not be sufficient to support a conviction by itself, however, it must "provide *prima facie* corroboration of the crime described a defendant's incriminating statement." Aten, 130 Wn.2d at 656.

The evidence here did not meet that requirement. In addition to corroborating the defendant's confession, independent evidence "must be consistent with guilt and inconsistent with a[] hypothesis of innocence." Aten, 130 Wn.2d at 660. Put another way, if the independent evidence supports reasonable and logical inferences both supporting the criminal theory and supporting a different theory, that "independent evidence" is insufficient as a matter of law to corroborate the defendant's incriminating statements and, in turn, support a conviction. Brockob, 159 Wn.2d at 329; Aten, 130 Wn.2d at 660.

Thus, in Brockob, where the defendant stole a large quantity of

Sudafed and admitted he planned to give it to someone to make methamphetamine, the evidence was insufficient under the *corpus delicti* rule to prove possession with intent to manufacture methamphetamine. 149 Wn.2d at 332. The facts showed only a “logical and reasonable inference” of intent to steal Sudafed. Id. While an officer testified that Sudafed was used to manufacture methamphetamine, that testimony “does not necessarily lead to the logical inference that Brockob intended to do so, without more.” 149 Wn.2d at 331-32.

In this case, the only corroborating evidence upon which the trial court relied was the presence of \$2,150 in the safe where the drugs were also found. But that evidence was also consistent with Mr. Hotchkiss, II, receiving payment from his renters, as he claimed. The fact of money in the safe where the drugs were found did not show a “logical and reasonable inference” that the money was proceeds from drug sales or indicative of intent to sell. It was just as likely that the money was in there for the reasons Mr. Hotchkiss, II, said - because he stored money in his home safe and had some rent from his tenants, as well as money from his pay.

As a matter of law, therefore, because the “independent evidence” of the money in the safe can be either innocuous or not, that money is insufficient to corroborate the defendant’s statement and thus support the conviction. See Brockob, 159 Wn.2d at 330.

In concluding to the contrary, the trial court here tried to distinguish Brockob by saying that the possession of Sudafed is legal under certain circumstances but methamphetamine is not. The apparent implication is that the *corpus delicti* rule does not apply unless the

possession itself could be innocuous. But the Brockob case involved someone *stealing* Sudafed, not lawfully possessing it. 159 Wn.2d at 331-32. And the Court specifically rejected the idea that the *corpus delicti* rule looks at whether someone is innocent of committing any crime at all, instead repeating its commitment to requiring that the state must prove evidence sufficient to support the inference that he committed “*the crime with which he was charged*,” not some other offense. Brockob, 159 Wn.2d at 332 (emphasis in original).

Further, the facts regarding another defendant in Brockob also illustrate the problem where, as here, there was conflicting evidence. In that case, one defendant was accused of attempted robbery in the second degree for unplugging and apparently trying to take a CD/DVD player from a home, allegedly saying he was taking it to make sure its owner had to “come see him” to get it back. 159 Wn.2d at 333-34. The state claimed that the evidence was sufficient under the *corpus delicti* rule to corroborate his statements to the officers that he intended to take the item without permission, but the defendant also presented testimony from the owner that he had given permission, and the evidence showed the two men were longtime friends. 159 Wn.2d at 334.

Thus, the Supreme Court noted, there was evidence presented both supporting the inference that the crime had occurred and that it had not. 159 Wn.2d at 334. At that point, instead of taking the evidence in the light most favorable to the state and assuming the inference most favorable to the state’s theory, the Supreme Court instead reversed, declaring, “[u]nder the *corpus delicti* rule, if the independent evidence supports hypotheses of

both guilt and innocence, it is insufficient to corroborate a defendant's admission of guilt. Brockob, 159 Wn.2d at 334.

"In other words," the Court held, "if the facts suggest there is an innocent hypothesis for the events, the State's evidence is insufficient to corroborate a defendant's confession." 159 Wn.2d at 335.

Here, the independent evidence upon which the lower court relied was the presence of the money in the safe. That \$2,150 was seen as supporting an inference that the drugs also in the safe were possessed with the intent to deliver. But that money could also have been there for innocent reasons. It cannot serve as the "independent evidence" establishing a *prima facie* case under the *corpus delicti* rule in this matter.

In response, the prosecution may urge the Court to rely on evidence not relied on by the court below about the "normal" amount a person would possess if they were a user as opposed to a dealer. Any such effort should be soundly rejected. The trial court's ruling below specifically did not rely on that testimony but only the money in the safe. CP 230-27.

Further, the officer's opinions below are not enough. In its findings, the trial court erroneously declared that "the DTF detectives in our instant case could and did properly testify, based on their experience and training, that the amount of methamphetamine possessed by Hotchkiss could be more than a personal use amount, could be a deliverable amount." CP 235-36. A finding of fact is reviewed for "substantial evidence," defined as evidence sufficient to convince a fair-minded person that a finding is true." See State v. Durham, 194 Wn. App. 744, 379 P.3d 958 (2016). At trial, "detectives" did not testify on this issue. Deputy Kessel was not asked to

opine about amounts for “personal use.” RP 261-281. Neither was Deputy Brockus. RP 281-296. Only Sergeant Moore gave his opinion on the amounts involved. The finding that multiple detectives testified based on their “training,” etc., is not supported by substantial evidence.

Further, a conviction for possession with intent to deliver cannot be based on testimony from officers opining about what amount an addict would “normally” possess. State v. Brown, 68 Wn. App. 480, 483, 843 P.2d 1098 (1993); see Lopez, 79 Wn. App. at 769. Thus, in Brown, the officer’s opinion that “normal” users carry one or two pieces of crack for personal use and the amount possessed by the defendant of 20 rocks was “definitely in excess of the amount commonly” seen for personal use only, that was insufficient to support a conviction for possession of cocaine with intent to deliver. Brown, 68 Wn. App. at 482-83. The defendant, a juvenile, was standing on a sidewalk in a “high narcotics” area near where he lived, was with another juvenile drinking from a beer bottle, ran away and dropped a baggie containing those 20 rocks. 68 Wn. App. at 482.

Even taken in the light most favorable to the state, the appellate court found the evidence insufficient and reversed. 68 Wn. App. at 483. And the Court rejected the idea that the officer’s opinion was enough, rejecting the state’s urging to so hold:

The State’s position would mean that any person possessing a controlled substance in an amount greater than some experienced law enforcement officer believes is ‘usual’ or ‘customary’ for personal use is subject to conviction for possession with intent to deliver.

68 Wn. App. at 482-83; see also, State v. Hutchins, 73 Wn. App. 211, 213, 217-18, 868 P.3d 196 (1994) (possessing 393 grams, stopped for a traffic

infraction, gave a false name, was in a hurry to get to a party and had the marijuana, still wet, at his feet); State v. Cobelli, 56 Wn. App. 921, 922, 788 P.2d 1091 (1989) (officers observe multiple short conversations with defendant and several clusters of people in a parking lot, testified that the manner was consistent with drug sales activity and recovered multiple baggies with a total of 1.4 grams of marijuana and money from pockets; insufficient to prove possession with intent without defendant's statement); State v. Kovac, 50 Wn. App. 117, 747 P.2d 484 (1987) (intent to deliver is not plainly indicated as a matter of logical probability based on possession of 8 grams of marijuana in seven separate baggies).

The prosecution failed to present sufficient independent evidence to prove a *prima facie* case of possession with intent to deliver, absent the incriminating statements of Mr. Hotchkiss, II. This Court should so hold and should reverse.

E. CONCLUSION

The prosecution failed to present sufficient independent evidence to prove the crime of possession with intent to deliver methamphetamine. Mere possession of 8.1 grams and \$2,150 in a safe, without more, is insufficient under the *corpus delicti* rule, especially given the innocuous explanation for the money. This Court should so hold and should reverse and dismiss the conviction.

DATED this 20th day of December, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY EFILING/MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Opening Brief to opposing counsel VIA this Court's upload service, at CntyPA.GeneralDelivery@clark.wa.gov,
and to appellant Lefe Hotchkiss, II, Clark County Jail, CFN 104200, P.O. Box 1147,
Vancouver, WA. 98666-1147.

DATED this 20th day of December, 2016

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Transmittal Letter

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Case Name: State v. Hotchkiss, II

Court of Appeals Case Number: 48963-5

Is this a Personal Restraint Petition? Yes ☐ No ☒

The document being Filed is:

Designation of Clerk's Papers

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Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

☒ Brief: Appellant's

Statement of Additional Authorities

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Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

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